FISHER, Circuit Judge, concurring.

I fully concur in Parts II, III, IV and V of the memorandum disposition. Respectfully, however, I write separately with regard to the majority's conclusion in Part I that the ALJ's failure to request medical source statements does not necessitate remand. It is an open question in this circuit whether the ALJ's failure necessarily requires remand or, as the majority holds, requires remand only when the decision of the ALJ is not supported by other substantial evidence in the existing record. The majority resolves this issue by relying on an out-of-circuit precedent and a district court opinion, neither of which is binding upon us.

Nor does an examination of the relevant regulations and Social Security rulings firmly answer the question. Social Security Ruling 96-5p speaks in terms of the mandatory nature of the ALJ's duty to request medical source statements. It states that the ALJ "*must* consider" such opinions and that the ALJ is "generally *required* to request" the statements, not that he generally *should* request them. SSR 96-5p (emphasis added). Similarly, the governing regulation states that the ALJ "*will* request a medical source statement about what you can still do despite your impairment(s)." 20 C.F.R. § 404.1513(b)(6) (emphasis added).

The majority invokes the regulation's proviso that "the lack of the medical source statement will not make the report incomplete." *Id.* But I do not think this

was intended to undermine the ALJ's obligation to request the documents in the first instance. For example, it is not unreasonable that although the ALJ has a duty to make the initial request, he or she is not prevented from going forward when a physician does not comply.

At base, my reservations about the majority's "substantial evidence" approach are twofold. First, it risks changing what is "generally required" of an ALJ from a duty to a more discretionary option. Second, it then places on the court the burden of reviewing the entire record to determine whether the failure to request source statements is reversible error. Not only are we ill-equipped to parse and weigh competing medical evidence, but we must also speculate whether close calls or ambiguities in the record would have been resolved differently had the medical source statements not been omitted. That is why I would prefer to reinforce the clear mandate to the ALJ to flesh out the record in the first instance.

That said, I am persuaded that the medical source statements of Drs. Villanueva and Betts-Doughty would not undercut the ALJ's determination because both physicians indicated that Davis experienced only moderate symptoms. Thus I concur in the result the majority has reached in Part I.